

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVIDSON HENAO, MIGUEL MERO,
OMOBOWALE AVOSEH, RASHEEM MARTIN, and
SHAWN WILLIAMS, for themselves and all others
similarly situated,

Plaintiffs,

-against-

PARTS AUTHORITY, LLC, PARTS AUTHORITY,
INC., YARON ROSENTHAL, NORTHEAST
LOGISTICS, INC. d/b/a “Diligent Delivery Systems,”
ARIZONA LOGISTICS, INC. d/b/a “Diligent Delivery
Systems,” BBB LOGISTICS, INC. d/b/a “Diligent
Delivery Systems,” MICHIGAN LOGISTICS, INC.
d/b/a “Diligent Delivery Systems,” LARRY BROWNE,
DOES 1-20 d/b/a “Diligent Delivery Systems,” and
DOES 21-40,

Defendants.

19-cv-10720 (LGS) (BCM)

ANSWER

PARTS AUTHORITY, LLC, PARTS AUTHORITY, INC. and YARON ROSENTHAL
(hereinafter “Defendants”), by and through their attorneys, as and for their Answer to the Third
Amended Complaint in the above-captioned action, hereby responds as follows:

1. Deny the allegations in Paragraph 1.
2. Deny the allegations in Paragraph 2.
3. Deny the allegations in Paragraph 3.
4. Deny the allegations in Paragraph 4.
5. Deny the allegations in Paragraph 5.
6. Deny the allegations in Paragraph 6.
7. Deny the allegations in Paragraph 7.
8. Deny the allegations in Paragraph 8.
9. The allegations in Paragraph 9 are not allegations of fact that Defendants can admit

or deny.

10. The allegations in Paragraph 10 are not allegations of fact that Defendants can admit or deny.

11. The allegations in Paragraph 11 are not allegations of fact that Defendants can admit or deny.

12. The allegations in Paragraph 12 are not allegations of fact that Defendants can admit or deny.

13. The allegations in Paragraph 13 are not allegations of fact that Defendants can admit or deny.

14. Deny the allegations in Paragraph 14.

15. The allegations in Paragraph 15 are not allegations of fact that Defendants can admit or deny.

16. The allegations in Paragraph 16 are not allegations of fact that Defendants can admit or deny.

17. Deny the allegations in Paragraph 17 including footnote 1.

18. The allegations in Paragraph 18 are not allegations of fact that Defendants can admit or deny.

19. The allegations in Paragraph 19 are not allegations of fact that Defendants can admit or deny.

20. The allegations in Paragraph 20 are not allegations of fact that Defendants can admit or deny.

21. The allegations in Paragraph 21 are not allegations of fact that Defendants can admit or deny.

22. The allegations in Paragraph 22 are not allegations of fact that Defendants can admit or deny.

23. The allegations in Paragraph 23 are not allegations of fact that Defendants can admit or deny.

24. The allegations in Paragraph 24 are not allegations of fact that Defendants can admit or deny.

25. The allegations in Paragraph 25 are not allegations of fact that Defendants can admit or deny.

26. The allegations in Paragraph 26 are not allegations of fact that Defendants can admit or deny.

27. Deny the allegations in Paragraph 27.

28. Admit the allegations in Paragraph 28.

29. Deny the allegations in Paragraph 29.

30. Deny the allegations in Paragraph 30.

31. Deny the allegations in Paragraph 31.

32. Deny the allegations in Paragraph 32.

33. Deny the allegations in Paragraph 33.

34. Deny the allegations in Paragraph 34.

35. Deny the allegations in Paragraph 35, except admit that Larry Browne is an individual who resides in Texas.

36. Deny the allegations in Paragraph 36.

37. Deny the allegations in Paragraph 37.

38. Deny the allegations in Paragraph 38.

39. Deny the allegations in Paragraph 39.
40. Deny the allegations in Paragraph 40.
41. Deny the allegations in Paragraph 41.
42. Deny the allegations in Paragraph 42.
43. Deny the allegations in Paragraph 43.
44. Deny the allegations in Paragraph 44.
45. Deny the allegations in Paragraph 45.
46. Deny the allegations in Paragraph 46.
47. Deny the allegations in Paragraph 47.
48. Deny the allegations in Paragraph 48.
49. Deny knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 49.
50. Deny the allegations in Paragraph 50.
51. Deny the allegations in Paragraph 51.
52. Deny the allegations in Paragraph 52, except deny knowledge and information sufficient to form a belief as to the truth of Plaintiff's residence.
53. Deny the allegations in Paragraph 53 except deny knowledge and information sufficient to form a belief as to the truth of Plaintiff's residence.
54. Deny the allegations in Paragraph 54 except deny knowledge and information sufficient to form a belief as to the truth of Plaintiff's residence.
55. Deny the allegations in Paragraph 55 except deny knowledge and information sufficient to form a belief as to the truth of Plaintiff's residence.

56. Deny the allegations in Paragraph 56 except deny knowledge and information sufficient to form a belief as to the truth of Plaintiff's residence.

57. Deny the allegations in Paragraph 57.

58. Admit the allegations in Paragraph 58.

59. Deny the allegations in Paragraph 59.

60. Deny the allegations in Paragraph 60.

61. Deny the allegations in Paragraph 61.

62. Deny the allegations in Paragraph 62.

63. Deny the allegations in Paragraph 63.

64. Deny the allegations in Paragraph 64.

65. Deny the allegations in Paragraph 65.

66. Deny the allegations in Paragraph 66.

67. Deny the allegations in Paragraph 67.

68. Deny the allegations in Paragraph 68.

69. Deny the allegations in Paragraph 69.

70. Deny the allegations in Paragraph 70.

71. Deny the allegations in Paragraph 71.

72. Deny the allegations in Paragraph 72.

73. Deny the allegations in Paragraph 73.

74. Deny the allegations in Paragraph 74.

75. Deny the allegations in Paragraph 75.

76. Deny the allegations in Paragraph 76.

77. Deny the allegations in Paragraph 77.

- 78. Deny the allegations in Paragraph 78.
- 79. Deny the allegations in Paragraph 79.
- 80. Deny the allegations in Paragraph 80.
- 81. The allegations in Paragraph 81 are not allegations of fact that Defendants can admit or deny.
- 82. Deny the allegations in Paragraph 82.
- 83. Deny the allegations in Paragraph 83.
- 84. Deny the allegations in Paragraph 84.
- 85. Deny the allegations in Paragraph 85.
- 86. Deny the allegations in Paragraph 86.
- 87. Deny the allegations in Paragraph 87.
- 88. Deny the allegations in Paragraph 88.
- 89. Deny the allegations in Paragraph 89.
- 90. Deny the allegations in Paragraph 90.
- 91. Deny the allegations in Paragraph 91.
- 92. Deny the allegations in Paragraph 92.
- 93. Deny the allegations in Paragraph 93.
- 94. Deny the allegations in Paragraph 94.
- 95. Deny the allegations in Paragraph 95.
- 96. Deny the allegations in Paragraph 96.
- 97. The allegations in Paragraph 97 are not allegations of fact that Defendants can admit or deny.
- 98. Deny the allegations in Paragraph 98.

- 99. Deny the allegations in Paragraph 99.
- 100. Deny the allegations in Paragraph 100.
- 101. Deny the allegations in Paragraph 101.
- 102. Deny the allegations in Paragraph 102.
- 103. Deny the allegations in Paragraph 103.
- 104. Deny the allegations in Paragraph 104.
- 105. Deny the allegations in Paragraph 105.
- 106. Deny the allegations in Paragraph 106.
- 107. Deny the allegations in Paragraph 107.
- 108. Deny the allegations in Paragraph 108.
- 109. Deny the allegations in Paragraph 109.
- 110. Deny the allegations in Paragraph 110.
- 111. Deny the allegations in Paragraph 111.
- 112. Deny the allegations in Paragraph 112.
- 113. Deny the allegations in Paragraph 113.
- 114. Deny the allegations in Paragraph 114.
- 115. Deny the allegations in Paragraph 115.
- 116. Deny the allegations in Paragraph 116.
- 117. Deny the allegations in Paragraph 117.
- 118. Deny the allegations in Paragraph 118.
- 119. Deny the allegations in Paragraph 119.
- 120. Deny the allegations in Paragraph 120.
- 121. Deny the allegations in Paragraph 121.

122. Deny the allegations in Paragraph 122.

123. Deny the allegations in Paragraph 123.

124. Deny the allegations in Paragraph 124.

125. Deny the allegations in Paragraph 125.

126. The allegations in Paragraph 126 are not allegations of fact that Defendants can admit or deny.

127. The allegations in Paragraph 127 are not allegations of fact that Defendants can admit or deny.

128. Deny the allegations in Paragraph 128.

129. Deny the allegations in Paragraph 129.

130. The allegations in Paragraph 130 are not allegations of fact that Defendants can admit or deny.

131. Deny the allegations in Paragraph 131.

132. Deny the allegations in Paragraph 132.

133. Deny the allegations in Paragraph 133.

134. Deny the allegations in Paragraph 134.

135. Deny the allegations in Paragraph 135.

136. Deny the allegations in Paragraph 136.

137. Deny the allegations in Paragraph 137.

138. Deny the allegations in Paragraph 138.

139. Deny the allegations in Paragraph 139.

140. The allegations in Paragraph 140 are not allegations of fact that Defendants can admit or deny.

141. The allegations in Paragraph 141 are not allegations of fact that Defendants can admit or deny.

142. Deny the allegations in Paragraph 142.

143. Deny the allegations in Paragraph 143.

144. Deny the allegations in Paragraph 144.

145. Deny the allegations in Paragraph 145.

146. Deny the allegations in Paragraph 146.

147. Deny the allegations in Paragraph 147.

148. Deny the allegations in Paragraph 148.

149. Deny the allegations in Paragraph 149.

150. The allegations in Paragraph 150 are not allegations of fact that Defendants can admit or deny.

151. The allegations in Paragraph 151 are not allegations of fact that Defendants can admit or deny.

152. Deny the allegations in Paragraph 152.

153. Deny the allegations in Paragraph 153.

154. Deny the allegations in Paragraph 154.

155. Deny the allegations in Paragraph 155.

156. Deny the allegations in Paragraph 156.

157. Deny the allegations in Paragraph 157.

158. Deny the allegations in Paragraph 158.

159. Deny the allegations in Paragraph 159.

160. The allegations in Paragraph 160 are not allegations of fact that Defendants can admit or deny.

161. The allegations in Paragraph 141 are not allegations of fact that Defendants can admit or deny.

162. Deny the allegations in Paragraph 162.

163. Deny the allegations in Paragraph 163.

164. The allegations in Paragraph 160 are not allegations of fact that Defendants can admit or deny.

165. Deny the allegations in Paragraph 165.

166. Deny the allegations in Paragraph 166.

167. Deny the allegations in Paragraph 167.

168. Deny the allegations in Paragraph 168.

169. Deny the allegations in Paragraph 169.

170. Deny the allegations in Paragraph 170.

171. Deny the allegations in Paragraph 171.

172. Deny the allegations in Paragraph 172.

173. Defendants reassert and re-allege their answers set forth above.

174. Deny the allegations in Paragraph 174.

175. The allegations in Paragraph 160 are not allegations of fact that Defendants can admit or deny.

176. Deny the allegations in Paragraph 176.

177. Deny the allegations in Paragraph 177.

178. Deny the allegations in Paragraph 178.

179. Deny the allegations in Paragraph 179.
180. Deny the allegations in Paragraph 180.
181. Deny the allegations in Paragraph 181.
182. Deny the allegations in Paragraph 182.
183. Deny the allegations in Paragraph 183.
184. Deny the allegations in Paragraph 184.
185. Deny the allegations in Paragraph 185.
186. Defendants reassert and re-allege their answers set forth above.
187. Deny the allegations in Paragraph 187.
188. Deny the allegations in Paragraph 188.
189. Deny the allegations in Paragraph 189.
190. Deny the allegations in Paragraph 190.
191. The allegations in Paragraph 191 are not allegations of fact that Defendants can admit or deny.
192. Deny the allegations in Paragraph 192.
193. Deny the allegations in Paragraph 193.
194. The allegations in Paragraph 194 are not allegations of fact that Defendants can admit or deny.
195. Deny the allegations in Paragraph 195.
196. Deny the allegations in Paragraph 196.
197. Deny the allegations in Paragraph 197.
198. Deny the allegations in Paragraph 198.
199. Deny the allegations in Paragraph 199.

200. Deny the allegations in Paragraph 200.

201. Deny the allegations in Paragraph 201.

202. Defendants reassert and re-allege their answers set forth above.

203. Deny the allegations in Paragraph 203.

204. The allegations in Paragraph 204 are not allegations of fact that Defendants can admit or deny.

205. Deny the allegations in Paragraph 205.

206. Deny the allegations in Paragraph 206.

207. Deny the allegations in Paragraph 207.

208. Deny the allegations in Paragraph 208.

209. Deny the allegations in Paragraph 209.

210. Deny the allegations in Paragraph 210.

211. Deny the allegations in Paragraph 211.

212. Deny the allegations in Paragraph 212.

213. Deny the allegations in Paragraph 213.

214. Deny the allegations in Paragraph 214.

215. Deny the allegations in Paragraph 215.

216. Deny the allegations in Paragraph 216.

217. Defendants reassert and re-allege their answers set forth above.

218. Deny the allegations in Paragraph 218.

219. The allegations in Paragraph 219 are not allegations of fact that Defendants can admit or deny.

220. Deny the allegations in Paragraph 220.

- 221. Deny the allegations in Paragraph 221.
- 222. Deny the allegations in Paragraph 222.
- 223. Deny the allegations in Paragraph 223.
- 224. Deny the allegations in Paragraph 224.
- 225. Deny the allegations in Paragraph 225.
- 226. Deny the allegations in Paragraph 226.
- 227. Deny the allegations in Paragraph 227.
- 228. Deny the allegations in Paragraph 228.
- 229. Deny the allegations in Paragraph 229.
- 230. Deny the allegations in Paragraph 230.
- 231. Defendants reassert and re-allege their answers set forth above.
- 232. Deny the allegations in Paragraph 232
- 233. Deny the allegations in Paragraph 233.
- 234. Deny the allegations in Paragraph 234.
- 235. Deny the allegations in Paragraph 235.
- 236. Deny the allegations in Paragraph 236.
- 237. Deny the allegations in Paragraph 237.
- 238. Deny the allegations in Paragraph 238.
- 239. The allegations in Paragraph 239 are not allegations of fact that Defendants can admit or deny.
- 240. The allegations in Paragraph 240 are not allegations of fact that Defendants can admit or deny.

241. The allegations in Paragraph 241 are not allegations of fact that Defendants can admit or deny.

242. Deny the allegations in Paragraph 242.

243. Deny the allegations in Paragraph 243.

244. Deny the allegations in Paragraph 244.

245. Deny the allegations in Paragraph 245.

246. Deny the allegations in Paragraph 246.

247. Deny the allegations in Paragraph 247.

248. Deny the allegations in Paragraph 248.

249. Deny the allegations in Paragraph 249.

250. Deny the allegations in Paragraph 250.

251. Defendants reassert and re-allege their answers set forth above.

252. Deny the allegations in Paragraph 252.

253. The allegations in Paragraph 253 are not allegations of fact that Defendants can admit or deny.

254. Deny the allegations in Paragraph 254.

255. Deny the allegations in Paragraph 255.

256. Deny the allegations in Paragraph 256.

257. Deny the allegations in Paragraph 257.

258. The allegations in Paragraph 258 are not allegations of fact that Defendants can admit or deny.

259. Deny the allegations in Paragraph 259.

260. Deny the allegations in Paragraph 260.

261. Deny the allegations in Paragraph 261.

262. Deny the allegations in Paragraph 262.

263. Deny the allegations in Paragraph 263.

264. Defendants reassert and re-allege their answers set forth above.

265. Deny the allegations in Paragraph 265

266. The allegations in Paragraph 266 are not allegations of fact that Defendants can admit or deny.

267. Deny the allegations in Paragraph 267.

268. Deny the allegations in Paragraph 268.

269. The allegations in Paragraph 269 are not allegations of fact that Defendants can admit or deny.

270. Deny the allegations in Paragraph 270.

271. Deny the allegations in Paragraph 271.

272. Deny the allegations in Paragraph 272.

273. Deny the allegations in Paragraph 273.

274. Deny the allegations in Paragraph 274.

275. Defendants reassert and re-allege their answers set forth above.

276. Deny the allegations in Paragraph 276.

277. The allegations in Paragraph 277 are not allegations of fact that Defendants can admit or deny.

278. Deny the allegations in Paragraph 278.

279. Deny the allegations in Paragraph 279.

280. Deny the allegations in Paragraph 280.

- 281. Deny the allegations in Paragraph 281.
- 282. Deny the allegations in Paragraph 282.
- 283. Deny the allegations in Paragraph 283.
- 284. Deny the allegations in Paragraph 284.
- 285. Defendants reassert and re-allege their answers set forth above.
- 286. Deny the allegations in Paragraph 286.
- 287. Deny the allegations in Paragraph 287.
- 288. Deny the allegations in Paragraph 288.
- 289. Deny the allegations in Paragraph 289.
- 290. Deny the allegations in Paragraph 290.
- 291. Deny the allegations in Paragraph 291.
- 292. Deny the allegations in Paragraph 292.
- 293. Deny the allegations in Paragraph 293.
- 294. Deny the allegations in Paragraph 293.
- 295. Defendants reassert and re-allege their answers set forth above.
- 296. Deny the allegations in Paragraph 296.
- 297. The allegations in Paragraph 297 are not allegations of fact that Defendants can admit or deny.
- 298. Deny the allegations in Paragraph 298.
- 299. Deny the allegations in Paragraph 299.
- 300. Deny the allegations in Paragraph 300.
- 301. Deny the allegations in Paragraph 301.
- 302. Deny the allegations in Paragraph 302.

- 303. Deny the allegations in Paragraph 303.
- 304. Deny the allegations in Paragraph 304.
- 305. Deny the allegations in Paragraph 305.
- 306. Deny the allegations in Paragraph 306.
- 307. Defendants reassert and re-allege their answers set forth above.
- 308. Deny the allegations in Paragraph 308.
- 309. The allegations in Paragraph 309 are not allegations of fact that Defendants can admit or deny.
- 310. Deny the allegations in Paragraph 310.
- 311. Deny the allegations in Paragraph 311.
- 312. The allegations in Paragraph 312 are not allegations of fact that Defendants can admit or deny.
- 313. The allegations in Paragraph 313 are not allegations of fact that Defendants can admit or deny.
- 314. Deny the allegations in Paragraph 314.
- 315. The allegations in Paragraph 315 are not allegations of fact that Defendants can admit or deny.
- 316. Deny the allegations in Paragraph 316.
- 317. Deny the allegations in Paragraph 317.
- 318. Deny the allegations in Paragraph 318.
- 319. Deny the allegations in Paragraph 319.
- 320. Deny the allegations in Paragraph 320.
- 321. Deny the allegations in Paragraph 321.

- 322. Deny the allegations in Paragraph 322.
- 323. Deny the allegations in Paragraph 323.
- 324. Deny the allegations in Paragraph 324.
- 325. Defendants reassert and re-allege their answers set forth above.
- 326. Deny the allegations in Paragraph 326.
- 327. Deny the allegations in Paragraph 327.
- 328. Deny the allegations in Paragraph 328.
- 329. Deny the allegations in Paragraph 329.
- 330. Deny the allegations in Paragraph 330.
- 331. Deny the allegations in Paragraph 331.
- 332. Defendants reassert and re-allege their answers set forth above.
- 333. Deny the allegations in Paragraph 233.
- 334. Deny the allegations in Paragraph 334.
- 335. Deny the allegations in Paragraph 335.
- 336. Deny the allegations in Paragraph 336.
- 337. Deny the allegations in Paragraph 337.
- 338. Deny the allegations in Paragraph 338.
- 339. Deny the allegations in Paragraph 339.
- 340. Deny the allegations in Paragraph 340.
- 341. Deny each and every allegation not hereinbefore specifically admitted, denied or controverted.

DEFENSES

As separate and distinct defenses, and without conceding that it bears the burden of proof as to any of these issues, Defendants assert the following defenses.

1. The Complaint and cause of action alleged therein fail to state a claim upon which relief can be granted against Defendants on behalf of Plaintiffs or the putative class and collective action members.

2. Plaintiffs' claims and the claims of the putative class and collective action members are barred, in whole or in part, to the extent they arose outside the applicable statutes of limitations.

3. Plaintiffs' claims and the claims of the putative class and collective action members are barred, in whole or in part, to the extent that such claims have been released, waived, discharged, and/or abandoned.

4. Plaintiffs' claims and the claims of the putative class and collective action members are barred, in whole or in part, by the doctrines of Plaintiffs' claims and purported causes of action are barred, in whole or in part, by the doctrines of estoppel, waiver and laches.

5. Plaintiffs' claims and the claims of the putative class and collective action members are barred, in whole or in part, to the extent that Plaintiffs are bound, directly or indirectly, by arbitration agreements.

6. Plaintiffs' claims and the claims of the putative class and collective action members are barred, in whole or in part, to the extent Plaintiffs have failed to join a necessary party, to wit the individual or entity that employed and/or compensated Plaintiffs and arranged for their alleged services.

7. Plaintiffs' claims and the claims of the putative class and collective action members are barred, in whole or in part, to the extent Plaintiffs lack standing to assert some or all of the claims.

8. Plaintiffs' claims and the claims of the putative class and collective action members are barred, in whole or in part, because they have not sustained any injury or damage by reason of any act or omission of Defendants.

9. Plaintiffs' claims and those of the putative class and collective action members are barred as to all hours allegedly worked of which Defendants lacked actual or constructive knowledge.

10. Plaintiffs are not entitled to certification of this action as a class action because the purported classes are not so numerous that joinder of their members is impracticable, questions of law or fact are not common to the classes, the named Plaintiffs' claims are not typical of the claims or defenses of the purported classes, the named Plaintiffs will not fairly and adequately protect the interests of the classes, and the requirements of Fed. R. Civ. P. 23(a) and (b) are not met in this case.

11. Named Plaintiffs are not "similarly situated" to the alleged class they purport to represent and, as such, cannot bring a collective action under the FLSA.

12. The types of claims alleged by Plaintiffs on behalf of themselves and the alleged class and collective action members are matters in which individual questions predominate and, accordingly, are not appropriate for class or collective action treatment.

13. Plaintiffs were not subject to the control of Defendants nor economically dependent upon Defendants. Therefore, Plaintiffs were not Defendants' employees within the meaning of federal or state wage laws.

14. Plaintiffs lack standing to assert claims for violation of state laws other than New York and Maryland.

15. Parts Authority at all times acted in good faith to comply with the FLSA and other laws and with reasonable grounds to believe that its actions did not violate the FLSA and other laws and Parts Authority did not violate the FLSA willfully or act with an intent to violate the FLSA or other laws.

16. If Plaintiffs are determined to be employees of Defendants, to the extent that Plaintiffs were compensated in excess of the minimum wages to which they would have been entitled as an employee of Defendants, such additional compensation satisfies, in whole or in part, any alleged claim for unpaid wages or other relief sought, and/or the equitable doctrines of set off or recoupment apply to offset alleged wages owed.

17. Plaintiffs are estopped from contesting their status as an independent contractor because, on information and belief, Plaintiffs represented on their tax returns that they were independent owner operators.

18. The value of Plaintiff's deduction of business expenses from income received for delivery services is an offset to the claim that the expenses incurred effectively diminished the "wages" below the minimum required by the FLSA or other laws.

19. Defendants were not required to provide state law compliant wage notices or wage statements to persons that were not employees of Defendants and to whom Defendants provided no compensation.

RESERVATION OF RIGHTS

20. Defendants reserve the right to assert additional defenses that may become known during the course of discovery or otherwise and as additional plaintiffs opt in. No defense is being knowingly or intentionally waived.

WHEREFORE, Defendants respectfully request that the Court deny each and every demand, claim and prayer for relief contained in Complaint; award Defendants their costs, including reasonable attorneys' fees, incurred in connection with defending this action; and grant such other and further relief as the Court deems just and proper.

Dated: November 13, 2020
New York, New York

**ABRAMS FENSTERMAN FENSTERMAN
EISMAN FORMATO FERRARA WOLFE
AND CARONE, LLP**

By: /s/ Sharon P. Stiller

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sstiller@abramslaw.com

*Attorneys for Defendants Parts Authority, LLC,
Parts Authority, Inc. and Yaron Rosenthal*